

**AMENDMENT NO. 2 TO THE
CONTRACT BETWEEN THE CITY OF AUSTIN AND
AUSTIN'S AFRICAN AMERICAN CULTURAL HERITAGE DISTRICT**

This Amendment Number 2 ("Amendment") to the Contract between the City of Austin and Austin's African American Cultural Heritage District ("Contract") is entered by and between the parties exercise a renewal option under the Contract.

Section 4.1, Term of Contract, authorizes the parties to renew the contract, for a second time, from March 1, 2021 through February 28, 2022. The parties desire to exercise this second renewal option and amend the contract to adjust the term of the Contract to end on February 28, 2022.

All other terms and conditions as stated in the original Contract, including Section 3.1 limiting the dollar amount of the Contract to no more than \$300,000 per year, shall remain in effect.

The parties' duly authorized representatives execute this Amendment on the dates set forth, below.

CITY OF AUSTIN


BY: 

NAME: Sylnovia Holt-Rabb

TITLE: Acting Director

DATE: March 10, 2021

APPROVED AS TO FORM:



ASSISTANT CITY ATTORNEY

CONTRACTOR

BY: 

NAME: Pamela B. Owens

TITLE: CEO

DATE: 3/2/21

**AMENDMENT NO. 1 TO THE
CONTRACT BETWEEN THE CITY OF AUSTIN AND
AUSTIN'S AFRICAN AMERICAN CULTURAL HERITAGE
DISTRICT**

This Amendment ("Amendment") to the Contract between the City of Austin and Austin's African American Cultural Heritage District ("Contract") is entered by and between the parties exercise a renewal option under the Contract.

Section 4.1, Term of Contract, authorizes the parties to renew the contract from March 1, 2020 through February 28, 2021. The parties desire to exercise this renewal option and amend the contract to adjust the term to end on February 28, 2021. The parties retain the option, in Section 4.1, to again renew the Contract for a year after the new termination date of February 28, 2021. Such future renewal will be effected through a future amendment to the Contract.

All other terms and conditions as stated in the original Contract shall remain in effect.

The parties' duly authorized representatives execute this Amendment on the dates set forth, below.

CITY OF AUSTIN

CONTRACTOR

By: _____

By: _____

NAME: _____

Sylvia West Lobb

NAME: _____

Pamela B. Owens
Pamela B. Owens

TITLE: Acting Director, Economic Development

TITLE: _____

Interim Executive Director

DATE: 4/28/2020

DATE: _____

4/9/2020

APPROVED AS TO FORM:

R. Pigott

CONTRACT BETWEEN THE CITY OF AUSTIN AND
AUSTIN'S AFRICAN AMERICAN CULTURAL HERITAGE DISTRICT

Contract No. _____

This Contract is made by and between Austin's African American Cultural Heritage District ("Contractor") having offices at 1152 San Bernard Street, Austin, Texas 78702 and the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas.

WHEREAS, the City seeks to foster economic development and job creation in the City's African American Cultural Heritage District; and

WHEREAS, the City is providing funding to the Contractor, which provides cultural services; and

WHEREAS, the Contractor is intended to support historic preservation; and

WHEREAS, the Contractor desires to work with the City to enhance education, heritage, and artistic endeavors; and

WHEREAS, the City support for the Contractor, as provided in this Contract, is an economic development program of the City, and is intended to assist in the preservation of the City's African American Cultural Heritage District; and

WHEREAS, the grant of public funds provided in this Contract serves the City's goals of promoting local economic development, stimulating local business and commercial activity, and eliminating unemployment and underemployment, and is authorized under §§380.001 and 380.002, Texas Local Government Code;

NOW THEREFORE, the City and the Contractor, agree to the following terms and conditions:

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES.

- 1.1 Engagement of the Contractor. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained in this Contract, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 Responsibilities of the Contractor. The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3 Responsibilities of the City. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the City's Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all properly documented invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.
- 1.4 Designation of Key Personnel. The Contractor's Contract Manager for this engagement shall be Nefertiti Jackmon, Phone: (512) 505-8738. The City's Contract Manager for the engagement shall be Synovia Holt Rabb, (512) 974-3131

SECTION 2. SCOPE OF WORK.

- 2.1 Contractor's Obligations. The Contractor shall fully and timely provide the services described in Exhibit A, attached to and incorporated into this Contract, as if written word-for-word. All deliverables described in this Contract and Exhibit A, as well as in the Contractor's *Offer*, shall be provided by the Contractor in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations. All independent contractors and subcontractors must have written agreements with the Contractor and the Contractor shall produce such agreements upon request from the City. Within 10 days of the effective date of this Contract, the Contractor shall provide a copy of the office

rental agreement for rental space the Contractor has executed.

- 2.2 Audit. The Contractor shall provide a yearly financial audit of the African American Cultural Heritage District no later than 90 days after the close of the Contractor's fiscal year or at a time agreed upon in writing signed by both Parties.
- 2.3 Report. The Contractor shall provide a year-end report on the completion of the tasks identified in Exhibit A, and present the year-end report to the African American Resource Advisory Commission at a meeting date and time coordinated between the Parties.

SECTION 3. COMPENSATION.

- 3.1 Contract Amount. The City shall pay the Contractor in 12 monthly payments based on invoices received from the Contractor a total amount not to exceed \$300,000, per year. Each monthly payment shall be made within 30 days after the City receives the monthly reports from Contractor as set out in Section 3.3, below. Contractor agrees to accept this funding for the purpose of fostering the growth of the African American Cultural Heritage District and as full compensation for its services under this Contract. These services will be provided in accordance with the Scope of Work in Exhibit A. Payments to be made by the City under this Contract shall be made from current revenues available to the City.
- 3.2 Invoices. Invoices shall each be assigned an original invoice number and shall identify the purchase order or delivery order number if applicable, this Contract number, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information will not be processed and will be returned to the Contractor for correction. Invoices shall be mailed to the below address:

	City of Austin
Department:	Economic Development Department
Attn:	Sylnovia Holt Rabb
Address:	301 W. 2 nd Street, Suite 2030
City, State, Zip:	Austin, Texas 78701

Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request. The Contractor agrees to use the tax exemption certificate in strict compliance with State law. Failure to use the tax exemption certificate in compliance with State law is an event of default under this Contract for which the City will terminate this Contract.

3.3 Payment.

- 3.3.1 The Contractor shall submit a monthly invoice for payment together with a monthly report of all expenditures for that month with proper documentation. The Contractor shall submit this invoice and report on or before the 10th day of the month following the month requesting reimbursement. An annual report, is due no later than 60 days before February 29, 2020 (and 60 days before February 28, 2021, if the first renewal option is elected and 60 days before February 28, 2022, if the second renewal option is elected). In conjunction with this annual report:

All proper invoices received by the City will be paid within 30 calendar days of the City's receipt of the required monthly report and accompanying properly documented invoices. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- 3.3.1.1 delivery of defective or non-conforming deliverables by the Contractor;
- 3.3.1.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- 3.3.1.3 failure of the Contractor to pay subcontractors, or for labor, materials or equipment;
- 3.3.1.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- 3.3.1.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.1.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.1.7 failure of the Contractor to comply with any material provision of the Contract Documents.

Notice is given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8- 3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.4 Non-Appropriation. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non- or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 Travel Expenses. The City will not reimburse the Contractor for any travel, lodging, or per diem expenses in connection with the Contract.

3.6 Final Payment and Close-Out.

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims: (1) which have been previously asserted in writing and are not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified in this Contract, or (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations; and

3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION.

4.1 Term of Contract. This Contract is effective on March 1, 2019 and shall remain in effect until February 29, 2020. This Contract may be renewed for one year, from March 1, 2020 through February 28, 2021 and again from March 1, 2021 through February 28, 2022.

4.2 Right to Assurance. Whenever one Party to the Contract in good faith has reason to question the other Party's intent to perform, demand may be made to the other Party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding Party may treat this failure as an anticipatory repudiation of the Contract.

4.3 Default. The Contractor shall be in default of the Contract if the Contractor: (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Section 4.2, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.

4.4 Termination for Cause. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective 10 calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such 10 day period, cures the default, or provides evidence sufficient to prove to the City's reasonable satisfaction that the default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three years and any offer submitted by the Contractor may be disqualified for up to three years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 Termination without Cause. The City shall have the right to terminate the Contract, in whole or in part, without cause any time and on or after 30 calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or

otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

- 4.6 Fraud. Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES.

- 5.1 Insurance. The following insurance requirement applies.

5.1.1 General Requirements

- 5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.
- 5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City.
- 5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- 5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- 5.1.1.5 The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- 5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- 5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation / Contract number, the Buyer's name, and the Contractor's email address, and shall be mailed to the following address:

Attn: Ricardo Zavala
City of Austin Purchasing Office P. O. Box 1088
Austin, Texas 78767
- 5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- 5.1.1.9 If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- 5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the Parties or the underwriter on any such policies.
- 5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

- 5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- 5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- 5.1.1.14 The Contractor shall endeavor to provide the City 30 calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 Specific Coverage Requirements. The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements:

- 5.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
- 5.1.2.1.2 Independent Contractor's Coverage.
- 5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.
- 5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.
- 5.1.2.1.5 30 calendar days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.
- 5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

- 5.1.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage.
- 5.1.2.2.2 30 calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage.
- 5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 99018, or equivalent coverage.

5.1.2.3 Worker's Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements :

- 5.1.2.3.1 The Contractor's policy shall apply to the State of Texas;
- 5.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage; and
- 5.1.2.3.3 30 calendar days' Notice of Cancellation, Form WC 420601, or equivalent coverage.

5.1.2.4 Endorsements. The specific insurance coverage endorsements specified above, or their

equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

- 5.1.2.5 **Certificate:** The following statement must be shown on the Certificate of Insurance. The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies.

5.2 Equal Opportunity.

5.2.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non- Discrimination Certification.

5.2.2 **Americans with Disabilities Act (ADA) Compliance.** The Contractor shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

- 5.3 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES.

- 6.1 **Warranty - Services.** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

SECTION 7. MISCELLANEOUS.

7.1 Right to Audit.

7.1.1. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

- 7.2 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.3 Indemnity.

7.3.1 Definitions:

7.3.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.3.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.3.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's

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subcontractors, and third parties),

7.3.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.3.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THIS CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OF THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.4 Claims. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice to the City within 10 calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4 Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.5 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:
City of Austin, Purchasing Office
ATTN: Ricardo Zavala
Contracts Administrator
PO Box 1088
Austin, TX 78767

To the Contractor
Six-Square/Austin's African American Cultural Heritage District
ATTN: Nefertiti Jackmon
Executive Director
1152 San Bernard
Austin, TX 78702

7.6 Confidentiality. In order to provide the deliverables to the City, the Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). The Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.7 Advertising. The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.8 No Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

- 7.9 Gratuities. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 7.10 Prohibition against Personal Interest in Contracts. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 7.11 Independent Contractor. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 7.12 Assignment-Delegation. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto: it being the intention of the parties that there be no third party beneficiaries to the Contract.
- 7.13 Waiver. No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved Party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 7.14 Modifications. The Contract may only be modified or amended by a writing signed by both Parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 7.15 Interpretation. The Contract is intended by the Parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the Parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one Party, it is the intent of the Parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
- 7.16 Dispute Resolution.
- 7.16.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior-level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- 7.16.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation

process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally.

7.17 Minority and Women Owned Business Enterprise Procurement Program.

- 7.17.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.
- 7.17.2 The City of Austin has determined that no goals are appropriate for this Contract. Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.
- 7.17.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the City's Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE/WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE/WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE/WBE firms to solicit their interest in performing on the Contract; using MBE/WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.18 Living Wages and Benefits.

- 7.18.1 In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$15.00 per hour. The minimum wage is increased every year in accordance with the cost of living index. City will advise the Contractor of the new wage requirement and the Contractor agrees to be subject to and pay its employees the new minimum wage. This minimum wage is required for any Contractor employee directly assigned to this Contract, unless Published Wage Rates are included in the solicitation leading to this contract, in which case those Published Wage Rates control. In addition, the City may stipulate higher wage rates in certain contracts in order to assure quality and continuity of service.
- 7.18.2 Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this Contract. Proof of the health care plan shall be provided prior to award of a contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided, if required by the solicitation leading to this Contract.
- 7.18.3 The City requires Contractors to provide a signed certification within five calendar days of Contract execution certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$15.00 per hour and are offered a health care plan (see Exhibit B-1, Living Wages and Benefits Contractor Certification) . The certification shall include a list of all employees directly assigned to providing services under the Contract including their names and job titles. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

- 7.18.4 The Contractor shall maintain throughout the term of the Contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic

employment records shall at a minimum include:

- 7.18.4.1 employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number, if such is used in place of name on any time, work, or payroll records;
 - 7.18.4.2 time and date of week when employee's workweek begins;
 - 7.18.4.3 hours worked each day and total hours worked each workweek;
 - 7.18.4.4 basis on which employee's wages are paid;
 - 7.18.4.5 regular hourly pay rate;
 - 7.18.4.6 total daily or weekly straight-time earnings;
 - 7.18.4.7 total overtime earnings for the workweek;
 - 7.18.4.8 all additions to or deductions from the employee's wages;
 - 7.18.4.9 total wages paid each pay period; and
 - 7.18.4.10 date of payment and the pay period covered by the payment.
- 7.18.5 The Contractor shall provide with the first invoice and in each invoice thereafter a list of all personnel and contractors, individual Employee Certifications for all employees directly assigned to the Contract containing (see Exhibit B-2, Living Wages and Benefits Employee Certification):
- 7.18.5.1 the employee's name and job title;
 - 7.18.5.2 a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$15.00 per hour, and list each employee's salary; and
 - 7.18.5.3 a statement certifying that the employee is offered a health care plan with optional family coverage.
- 7.18.6 The employee certifications shall be signed by each employee directly assigned to the Contract.
- 7.18.7 The Contractor shall submit employee and contractor certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the Contract.
- 7.18.8 The City's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified above in this paragraph to verify compliance with this provision.
- 7.19 **Jurisdiction and Venue.** This Contract is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. The courts of Texas shall have jurisdiction of any dispute arising out of or concerning this Contract, either administrative or judicial, and venue shall be proper and lie exclusively in Travis County, Texas.
- 7.20 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
- 7.21 **Holidays.** The following holidays are observed by the City:

In witness hereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

SIX SQUARE/AUSTIN'S AFRICAN AMERICAN
HERITAGE DISTRICT

CITY OF AUSTIN

By: Nefertitti Jackmon
Signature

By: Rodney Gonzales
Signature

Name: Nefertitti Jackmon
Printed Name

Name: Rodney Gonzales
Printed Name

Title: Executive Director

Title: Assistant City Manager

Date: 1/30/19

Date: 02/15/2019

APPROVED AS TO FORM

R. Rigott
Assistant City Attorney

List of Exhibits / and Incorporated Documents

Exhibit A	Scope of Work
Exhibit B	Contractor Certifications
Exhibit B-1	Living Wages and Benefits Contractor Certification
Exhibit B-2	Living Wages and Benefits Employee Certification

Exhibit A-1

EVENT	FREQUENCY	DESCRIPTION	COST	OUTCOME
Heritage Tours (Heritage/Preservation) Community Partner: Austin's Conventions & Visitors Bureau	FEB, MAR, APR, MAY, JUN, JUL, AUG, SEP, OCT, NOV, DEC, JAN	Lead by Harrison Eppright, a native East Austinite and certified tour guide with the Austin Tour Guide Association for over 10 years, his storytelling skills re-animate East Austin's rich cultural history. The Heritage Tour encompasses landmarks of Black architecture and design, historic cemeteries and churches, the Victory Grill and other distinctive places that contributed to the great cultural legacy of Central East Austin.	In Kind	Attendance goal for the year: 180 (approx. 15 persons per tour). Estimated \$1,500 in revenue generated from the tours.
Gallery Exhibit (Cultural/Artistic & Economic Development) Community Partner: PreseNation Austin	MAR, MAY, JUL, NOV	Each exhibition is an opportunity to present traditionally underrepresented artists to new audiences. These artists are either from the community or their work speaks to the lives of the residents who have traditionally lived in East Austin, particularly those who have been invisible. Art is a catalyst for engaging our community and spurring social and cultural change and provide opportunities for artists and community members to engage in conversations about important issues, while also provide economic stimulus for artists and local vendors.	\$ 5,900.00	Attendance goal for the year: 200 people (approximately \$0 per exhibit). Estimated revenue from each exhibit is \$500.
Downs Field Preservation & Celebration (Heritage/Preservation) Community Partners: City of Austin Parks & Recreation De(It.,Huston Tillotson, Friends of Owensfield	9-May-16	In conjunction with the City of Austin Parks & Recreation Department and The Friends of Downs Reid, Six Square will continue its PreseNation efforts at Downs Field, beginning with a Ribbon Cutting Ceremony in April. Ongoing projects will include volunteer landscaping & other restoration efforts.	\$ 3,900.00	Estimated attendance 500.
For the Family - Women (Heritage/Preservation & Education) Community Partners: Weslex Church, Ebenezer Baptist Church	MAY	"Our Mothers Gardens" - Preserving Stories & the Legacy of Black Women of East Austin	\$ 900.00	Estimated attendance 30

Exhibit A-1

EVENT	FREQUENCY.	DESCRIPTION	COST	OUTCOME
Musical Explorations - (Cultural/Artistic & Economic Development) Community Partner(s): Victor! Grill	JUN, JUL, AUG, SEP, OCT, NOV, FEB	In conjunction with partners of Six Square, including Victory Grill, Six Square will present a wide variety of genres of the African/African American musical aesthetic including: the polyrhythmic beat of the drum, Songs of Lament, Gospel, Classical, Reggae, Hip-Hop, Jazz and Blues musical traditions.	\$ 19,100.00	Estimated attendance 65 people per event; total of 455 per year. Many artists are local without CD's for purchase.
Dream Lab (Economic Development) Community Partner: Black Chamber of Commerce	JUN, JUL, AUG, JAN, FEB	This new initiative is part of Six Square's effort to increase opportunities for economic development within the district. Dream Lab will assist budding to experienced entrepreneurs in any stage of development of a new idea, product, program and/or company that they are in. Business and community professionals will be available to provide feedback, guidance and advice to help advance aspiring entrepreneurs.	\$ 2,500.00	\$ labs at \$500 each. Our goal is to assist 10 people per lab for a total of \$0 people per year. We plan to incubate one new business each year.
For the Future - Boys (Heritage/Preservation & Education) Community Partners: 100 Black Men of Austin, NAACP, Greek Fraternities	JUL	An event designed to target young boys in the community to share with them the rich history of Central East Austin.	\$ 900.00	Estimated attendance 30
Preserving Cultural Spaces (Heritage/Preservation & Education) Community Partners: Friends of Downs Field, Carver Museum, CounterBalance ATX, Old Anderson Alumni Association, ACC African American Studies Organization, Preservation Austin	JUN, AUG, NOV	Participants will be part of an ongoing effort to engage and educate community regarding the importance of preserving and maintaining cultural spaces within Central East Austin. Projects include: Downs Field, Oakwood Chapel/Cemetery, The French Legation, Upper Boggy Creek Trail, Old Anderson High School, Mason Town and others.	\$ 3,000.00	Estimated attendance 550 (25 at each small event, over 500 for the Oakwood Cemetery Commemoration & Memorialization event)
District Festival (Cultural/Artistic, Heritage/Preservation, Education & Economic Development)	SEP	Six Square will present a district wide festival featuring artists, musicians, vendors and others in a fun filled day of activity and education geared toward the entire family. Participants will be encouraged to engage in conversations about their vision for Six Square.	NA	Estimated attendance 500-700 people. Estimated revenue \$5,000.

Exhibit A-1

EVENT	FREQUENCY	DESCRIPTION	COST	OUTCOME
Homecoming II (Education, Heritage/Preservation & Cultural/Artistic)	NOV	Our primary goal for Homecoming II includes raising awareness for the need to enhance and preserve African American Sacred Spaces such as cemeteries, places of worship and other cultural assets. Homecoming will include a lecture featuring established scholars and culturally relevant performances and it will also feature a ceremony to recognize the sacredness of our ancestors and the sacred spaces upon which they rest.	\$ 6,000.00	Attendance goal 2,000.
For the Family - Girls (Heritage/Preservation & Education) Community Partner: Local/Small Business Owners	DEC	An event designed to target young girls in the community to share with them the rich history of Central East Austin.	\$ 900.00	Estimated attendance 30
For the Family -Men (Heritage/Preservation & Education) Community Partner: Wesley Chapel, Ebenezer Baptist Church	JAN	Preserving the stories and legacy of African American boys & men.	\$ 900.00	Estimated attendance 30
Black History Month: College Jeopardy & Youth Trivia (Education, Cultural/Artistic) Community Partner(s): Huston-Tillotson, KAZI	FEB	In an effort to elevate African American culture as a true academic discipline, as well as meet the educational mission of Six Square, we will launch a academic trivia show engaging college and high school students as participants.	\$ 6,000.00	Attendance goal for the year: 1,200.

Six Square Annual Budget 2017
Exhibit A-2

DESCRIPTION	Cash	Notes
Beginning Fund Balance		
Income		
City of Austin	\$ 300,000.00	Annual draw from Economic Development Council
Total Income	\$ 300,000.00	

Six Square Annual Budget 2017

Exhibit A-2

Expenses			
Salaries, Benefits & Related Taxes		\$ 124,000.00	-
Executive Director	\$ 61,000.00		12 months at \$5,083.33/month
Office Manager	\$ 28,000.00		80% Under Operations (12 months at \$2,916.66/month)
Taxes	\$ 24,200.00		FIT, SS and medicare 13% of employee's salaries
Health Insurance Allowance	\$ 10,800.00		
Operations		\$ 40,700.00	
Office Rental	\$ 20,400.00		\$1,700 per month (\$20,400)
Telephone/Internet	\$ 2,231.76		12 months at \$185.98/month
Supplies	\$ 1,200.00		12 months at \$100/month
Office Equipment	\$ 500.00		
Office Maintenance	\$ 1,200.00		12 months at \$100/month
Utilities	\$ 3,600.00		12 months at \$300/month
Insurance	\$ 6,000.00		12 months at \$500/month
Miscellaneous	\$ 5,568.24		
Professional Services		\$ 18,500.00	-
Audit/Financial Accounting	\$ 9,500.00		
Bookkeeper	\$ 5,500.00		
Attorney	\$ 2,000.00		
Annual Report	\$ 1,500.00		
Travel & Training		\$ 1,500.00	
Miscellaneous		\$ 500.00	-
Program Expenses		\$ 104,800.00	-
Programming Manager	\$ 40,000.00		12 months at \$3,333.33/month
Office Manager	\$ 7,000.00		20% Under Programs (12 months at \$2,916.66/month)
Gallery Exhibits	\$ 8,700.00		3 Exhibits at \$1,200/each & EAST at \$2,300 & Gallery Curator \$2,800 (\$700/exhibit)
Dream Lab	\$ 2,500.00		5 Labs at \$500
For the Family Workshops	\$ 3,600.00		4 Events at \$900 each
Cemetery Preservation	\$ 3,000.00		3 Events at \$1,000 each
Musical Explorations	\$ 19,100.00		7 Events at \$2,728.57 each
Downs Field	\$ 3,900.00		
College Jeopardy	\$ 6,000.00		
Homecoming II	\$ 6,000.00		
Community Based Events	\$ 5,000.00		
Marketing Expenses		\$ 10,000.00	-
Web hosting	\$ 350.00		12 months at \$29.17/month
Total Expenses		\$ 300,000.00	
Ending Fund Balance		\$ -	



City of Austin Purchasing Office

Certificate of Exemption for Professional Services, Public Health and Safety or Other Exempt Purchase (Non-Competitive)

DATE: 01/03/2019

DEPT: Economic Development

TO: Purchasing Officer or Designee

FROM: Sylvania Holt-Rabb

PURCHASING POC: Ricardo Zavala

PHONE: 512.974.3131

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure unless the expenditure falls within an exemption listed in Section 252.022.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

The City has selected a vendor for contract award and declares the competitive solicitation procedures in Local Government Code Chapter 252.022 to be exempt for this procurement. This Certificate of Exemption is hereby executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this request:

- ☐ A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of a municipality.
- ☒ A procurement necessary to preserve or protect the public health or safety of the municipality's residents.
- ☐ A procurement necessary because of unforeseen damage to public machinery, equipment, or other property.
- ☐ A procurement of personal, professional, or planning services
- ☐ Other exemption from Chapter 252.022: _____

2. Describe this procurement

- What it is for and why it is needed?
- Describe the following (as applicable):
 - **For Public Calamity, Public Health and Safety, Unforeseen Damage to Public Machinery or Equipment, or Critical Business Need Exemptions:**
 - Provide description of the event leading to the procurement and a business justification for this purchase.
 - What would be the impact to department operations and the community if this purchase was not made?
 - How and why this vendor was selected?
 - **For Professional, Personal, or Planning Service Exemptions:**
 - Why is the vendor the most qualified to provide the services?
 - Does this vendor have a history of working with the City? If so, was it on this particular service?
 - Will this procurement be component of a larger service or phases of service?
 - Is the vendor a City of Austin local vendor?
 - Does the vendor hold an M/WBE certification with the City, a HUB certification with the State of Texas, or any other minority or women owned certifications?
 - What qualifications, certifications, or specialized training does the vendor have?
 - What is the impact if a contract is not secured with this particular vendor (loss of project timeline, loss of funding etc.)?
 - What other vendors can provide these services and why are they not the best fit for the contract?
 - **For Other Exceptions from Chapter 252.022:**
 - Explain the circumstances of the procurement.
 - **Prices were determined to be reasonable based on the following (select all that apply):**
 - ☐ Prices are established under a current Cooperative contract.
Notes: At a minimum, note the contract number, contract title, cooperative entity, and government or entity who created the contract.
 - ☒ Prices are the same or similar to current City contract.
Notes: At a minimum, note the City of Austin contract number and title.
 - ☐ Prices are the same or similar to current contract with another government.
Notes: At a minimum, note the contract number, title and government that created the contract.
 - ☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.
Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
 - ☐ Prices are established by law or regulation.
Notes: At a minimum, note the legal or regulatory reference that established the prices.
 - ☐ Other means of determining Price Reasonableness.
Notes: Describe any other source that was used to establish Price Reasonableness.

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

This proposed action authorizes funding of a management service contract with Six Square, a 501(c) (3) organization, for economic development programs and services. The recommendation for funding for this contract was originally initiated and approved by the City Council during the FY16 budget process. The Six Square organization is dedicated to enhancing the quality of life for residents of central east Austin by preserving the rich heritage and cultural contributions of Austin's African American community through historical interpretations, promotion of cultural and artistic events, and by serving as a catalyst for social and economic development.

Austin's African American Cultural Heritage District was declared as such by the State of Texas on September 3, 2009. The district boundaries, set by City Council in 2007, comprise approximately six square miles of central east Austin. The district is home to numerous sites of national, regional and local historic significance and celebrates African Americans and others who played important roles in creating the vibrancy of Austin.

The Economic Development Department (EDD) seeks to contract with Six Square to expand the prosperity of the district to:

Heritage/Preservation

- Conduct a conference in collaboration with other organizations focused on best practices for historic preservation of African American communities.

Marketing/Branding

- Market Six Square: Austin's Black Cultural District both to residents within the Austin metropolitan statistical area (MSA) and outside the MSA to attract tourists.
- Conduct monthly tours of historic sites within the district and track tourists by zip code.
- Publish and distribute a monthly newsletter and calendar of events for the district.
- Erect wayfinding markers for the district.

Artistic/Cultural Productions

- Conduct artistic and cultural productions within the district using national and local talent for Six Square's Gallery exhibits, The District Cultural Fest, Musical Explorations and other culturally relevant events.

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:
- ☒ Scope of Work or Statement of Work (if applicable)
 - ☐ Vendor's proposal/quote (if applicable)
 - ☒ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
 - ☐ Professional resumes, certifications, and/or licenses (Professional, Personal or Planning Services Only)
 - ☐ Other supporting documentation

4. Because of the above facts and supporting documentation, the City of Austin exempts this procurement from Local Government Code Chapter 252 and intends to contract with:

(Vendor Name): _____ for

(Description of Procurement): _____

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

☐ This is a one-time request for \$ _____

☒ This is a multi-term contract request for 12 (# months for base term) in the amount of \$300,000 with 2 (# of renewal options) for \$300,000 each for a total contract amount of \$900,000.

Recommended
Certification

Originator

Date

Approved
Certification

Department Director or designee

Date

Assistant City Manager / General Manager
or designee (procurement requiring Council approval)

Purchasing Office
Review

Authorized Purchasing Office Staff

Date

Purchasing Office
Management Review
(If required due to signature authority level)

Purchasing Officer or designee

Date

City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 3rd day of January, 2019

CONTRACTOR
Authorized
Signature

Title

Nefertitti Jackmon
Nefertitti Jackmon
Executive Director

City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name: Six Square:
Austin's Black Cultural District

Signature of Officer or
Authorized
Representative: Nefertitti Jackmon Date: 1/3/19

Printed Name: Nefertitti Jackmon

Title: Executive Director